IN THE HIGH COURT OF JUDICATURE AT PATNA
MA No.69 of 2004
NATIONAL INSURANCE CO.LTD.
Versus
MANOJ SINGH & ANR
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10 **7.7.2008** No body appears for Respondent No.2 Ashok Kumar Paul.

Heard learned counsel for the appellant and learned counsel for Respondent No.1.

National Insurance Company is the appellant. Manoj Singh happens to be the claimant.

The order under challenge is dated 21.1.2004 passed under Section 140 of the Motor Vehicle Act by the learned 7th Additional District Judge, Rohtas at Sasaram, in Motor Vehicle Claim Case No.109/2001, whereby and whereunder he has directed the Insurance Company to pay Rs.25,000/- to the claimant.

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The facts of the case are as follows. A truck belonging to Respondent No.2 Ashok Kumar Paul caused permanent disablement of Respondent No.1 Manoj Singh on 11.3.2001. An Account Payee cheque was issued by Respondent No.2 in favour of the appellant National Insurance Company on 19.2.2001 in respect of continuance and commencement of the Policy being effective from 26.2.2001 to 25.2.2002. The above cheque was dis-honoured by the drawee-Bank and as such the Policy was cancelled and an information to that effect was given to the truck owner, namely, Ashok Kumar Paul.

It has been submitted on behalf of the appellant- Insurance Company that, as a matter of fact, on account of dishonour of the cheque, there can not be any presumption of valid insurance from 26.2.2001 to 25.2.2002

and as such the Insurance Company is not at all liable for making any payment to the claimant as ordered by the learned court below for an accident having taken place on 11.3.2001. Even if, some claim is liable ,the liability fastens on the shoulder of the owner of the Truck and not on the Insurance Company.

A citation of the Hon'ble Apex court reported in Supreme Court Appeal Reporter 2000 SC,284 has been cited to show that the third party is not at all concerned with the insurance of the vehicle. Rather, he is entitled to get his claim from the owner of the vehicle.

Here, in the facts and circumstances of the case, it is made clear that on account of practically no policy in existence on the date of the accident, the Insurance Company can not be held liable for payment of any kind of compensation, may be interim or permanent, to the claimant.

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The claimant is at liberty to take necessary course of law to realise the amount from the owner of the vehicle. The matter is pending in the court below. So, the claimant is at liberty to get the same from the owner of the vehicle and not from the Insurance Company.

The owner of the truck in spite of being noticed did not opt to contest the case.

With the aforesaid observations, this appeal is hereby allowed.

SKBOSE **(Subash Chandra Jha)**